

Spangenberg
30345

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-216673.2, .3, .4, **DATE:** February 1, 1985
MATTER OF: .6, .7, .8, .9
Adams & Associates Travel Inc.; Enzor
Travel; Travelogue, Inc.

DIGEST:

1. GAO will dismiss protests concerning evaluation procedures and criteria that include allegations which are identical or similar to contentions made by another firm when that firm is seeking permanent relief in U.S. District Court. Since protesters' possible remedies are the same as could be given in the lawsuit, the substance of the protests are also at issue, even though the protesters are not parties to the suit and the protest details vary slightly.
2. GAO will dismiss protests alleging that an agency improperly failed to set aside an entire procurement for small business when the protests are filed after the closing date for receipt of initial proposals. In any event, the decision to set aside a particular procurement is essentially within the discretion of the contracting officer, and, with certain exceptions not applicable here, nothing in the Small Business Act makes it mandatory to set aside any particular procurement.

Adams & Associates Travel Inc., Enzor Travel, and Travelogue, Inc., protest awards under solicitation No. WFCG-E3-N-1137-8-1-R4, issued by the General Services Administration for arrangement of passenger travel for various federal agencies in the National Capital Region. The protests generally concern evaluation procedures and criteria, with allegations that certain criteria were not revealed to the offerors; that other criteria were not followed; and that financial data was not fairly evaluated. Additionally, the protests concern GSA's failure to set aside the entire procurement for small business. For the following reasons, we dismiss the protests.

031132

B-216673.2, .3, .4, .6,
.7, .8, .9

On October 16, 1984, Omega World Travel Inc. filed an action in the United States District Court for the District of Columbia, Omega World Travel, Inc. v. Ray Kline et al. (Civil Action No. 84-3190), requesting a temporary restraining order, preliminary injunction, and permanent relief on five of the awards. Omega had previously filed bid protests on this solicitation that we dismissed because the court had indicated no interest in a decision by our Office. See Omega World Travel, Inc., B-216672, B-216673, Nov. 6, 1984, 84-2 C.P.D. ¶ 505. The court has now denied Omega's request for a temporary restraining order and preliminary injunction; the request for permanent relief is still pending. On November 6, 1984, Omega moved to amend its complaint and add all remaining awards (except those to itself) to the lawsuit.

The Adams, Enzor, and Travelogue protests that are the subject of this decision concern those awards included in Omega's amended complaint, specifically line items B-1, B-2, B-4, B-8, B-11, B-14, B-15, B-16, and B-17 of the solicitation. Each represents a different travel agency site. The grounds of protest--allegedly improper evaluation procedures and criteria--are identical or similar to these made by Omega in the lawsuit. For example, both Omega and Adams complain that GSA made awards on the basis of initial proposals, rather than requesting best and final offers, and both Omega and Enzor complain that GSA made awards before receiving requested financial data from them.

In our opinion, these contentions are effectively part of the litigation, even though these protesters are not parties to it and their protest details may vary from Omega's. Each protester requests possible remedies that could also result if the court were to find in favor of Omega. Thus, as a practical matter, Omega's complaint in the court action puts at issue the substance of Adams', Enzor's and Travelogue's protests. See Nartron Corp. and D C Electronics, Inc., 53 Comp. Gen. 730 (1974), 74-1 C.P.D. ¶ 154; Stirling Converting Co., Inc., B-215202.2, July 3, 1984, 84-2 C.P.D. ¶ 16; Big Bend Community College; Central Texas Union Junior College, B-196278, B-196278.2, Apr. 23, 1980, 80-1 C.P.D. ¶ 288. Under such circumstances,

B-216673.2, .3, .4, .6,
.7, .8, .9

since the court neither requests, expects, nor is interested in our decision, we dismiss the protest. 4 C.F.R. ¶ 21.10 (1984); Stirling Converting Co., Inc., B-215202.2, supra, at 2.

In addition, we dismiss the protests against the failure to set aside the procurement for small business. These contentions, which are not before the court, are untimely filed with our Office under our Bid Protest Procedures, since they deal with an alleged defect apparent on the face of a solicitation, but were not raised until long after the closing date for receipt of proposals. See 4 C.F.R. § 21.2(b)(1). In any event, we would not review protests on this basis because a decision whether to set aside a particular procurement is essentially within the discretion of the contracting officer, and, with certain exceptions not applicable here, nothing in the Small Business Act or the procurement regulations makes it mandatory to set aside any particular procurement. FACE Associates, Inc., 63 Comp. Gen. 86 (1983), 83-2 CPD ¶ 643.

While we are still considering protests concerning items B-10, B-12, and B-13, which were awarded to Omega (see B-216773.5, .10, and .11), the protests of Adams, Enzor and Travelogue concerning items B-1, B-2, B-4, B-8, B-11, B-14, B-15, B-16, and B-17 are dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel